



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 28 October 2020

Session 5



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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
SUBORDINATE LEGISLATION.....	2
Planning (Scotland) Act 2019 (Commencement No 5 and Saving, Transitional and Consequential Provisions) Regulations 2020 (SSI 2020/294)	2
PERIOD PRODUCTS (FREE PROVISION) (SCOTLAND) BILL: STAGE 2	3

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

26th Meeting 2020, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Annie Wells (Glasgow) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Aileen Campbell (Cabinet Secretary for Communities and Local Government)

Monica Lennon (Central Scotland) (Lab)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Local Government and Communities Committee

Wednesday 28 October 2020

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (James Dornan): Good morning. I welcome everyone to the 26th meeting in 2020 of the Local Government and Communities Committee. Some of us are attending in person in committee room 1, and others are attending remotely, by videoconference.

I remind everyone that social distancing measures are in place in the committee room and across the Parliament. Please take care to observe them at all times this morning, including during breaks and when the meeting ends, and please put your mask on if you leave your seat for any time.

I remind members who are present in the room not to touch microphones or consoles during the meeting, as they will be operated remotely by broadcasting staff. Please ensure that all mobile phones are in silent mode. To those who are attending remotely, I say that broadcasting staff will operate your cameras and microphones, as usual. Please allow a short pause after being called to speak to allow them to do so.

Today's main business will be consideration of the Period Products (Free Provision) (Scotland) Bill at stage 2. However, under agenda item 1 we will first consider whether to take agenda items 4 and 5 in private. Item 4 is consideration of witnesses for stage 1 of the European Charter of Local Self-Government (Incorporation) (Scotland) Bill, and item 5 is consideration of a draft letter to the Scottish Government on pre-budget scrutiny 2021-22.

As some members are attending the meeting remotely, rather than ask whether everyone agrees, I will instead ask whether any member objects. If there is silence, I will assume that members are content. Does any member object to taking those items in private?

As no member has indicated that they object, it is agreed that items 4 and 5 will be taken in private.

Subordinate Legislation

Planning (Scotland) Act 2019 (Commencement No 5 and Saving, Transitional and Consequential Provisions) Regulations 2020 (SSI 2020/294)

09:32

The Convener: Agenda item 2 is consideration of a Scottish statutory instrument—SSI 2020/294, as listed on the agenda. I refer members to paper 1. The instrument has been laid under the negative procedure, which means that its provisions will come into force unless Parliament agrees to a motion to annul it. No motion to annul has been lodged.

The Delegated Powers and Law Reform Committee considered the instrument on 6 October 2020 and determined that it did not need to draw the attention of Parliament to the instrument on any grounds within its remit.

Do members have any comments on the instrument? No member is indicating that they wish to comment, so I invite the committee to agree that it does not wish to make any further recommendations on the instrument.

Members indicated agreement.

Period Products (Free Provision) (Scotland) Bill: Stage 2

09:33

The Convener: Under agenda item 3, the committee will consider the Period Products (Free Provision) (Scotland) Bill at stage 2.

I am pleased to welcome to today's proceedings Monica Lennon, the member in charge of the bill, who is present to speak to and move her amendments. I am also pleased to welcome the Cabinet Secretary for Communities and Local Government to speak to and move amendments on behalf of the Scottish Government.

This is the committee's first experience of stage 2 proceedings at a hybrid meeting. For information, I point out that if there are any votes on amendments, I will call the vote alphabetically by roll call, to aid recording and transparency. I will put the question on the amendment and ask each member in turn whether they agree or disagree to the amendment or wish to abstain, with my vote being recorded last. The clerks will then record the result.

I will call those who have amendments being considered today in the usual order. If any member who is attending in person wishes to contribute to a debate on a group—even one in which they do not have an amendment—they should catch my eye in the usual way. Any member who is attending remotely should catch my attention by typing "R" in the BlueJeans chat function or in the WhatsApp group for members.

I hope that that is sufficiently clear. If so, we will proceed.

Section 1—Right to free period products

The Convener: We move on to consideration of amendments to section 1 of the bill. Group 1 is on the duty on local authorities. Amendment 17, in the name of the cabinet secretary, is grouped with amendments 18, 7 and 19. I invite the cabinet secretary to move amendment 17. [*Interruption.*]

I suspend the meeting.

09:35

Meeting suspended.

09:39

On resuming—

The Convener: I apologise for having to have that brief suspension. We were having some technical difficulties, but we are now back.

Before I bring in the cabinet secretary to speak to her amendments in the first group, I wish to mention John McCluskie, who drafted the Period Products (Free Provision) (Scotland) Bill. John was a much-respected former chief drafter for the Scottish Executive. In his retirement, he offered his expertise to the Parliament's non-Government bills unit in drafting bills for back-bench members. He died suddenly this summer, and we pass on our condolences to his family for their loss.

Amendment 17, in the name of the cabinet secretary, is grouped with amendments 18, 7 and 19.

The Cabinet Secretary for Communities and Local Government (Aileen Campbell): I am sorry to hear that news; we, too, pass on our condolences to John McCluskie's friends, family and colleagues.

I extend my thanks to the committee for its stage 1 consideration of the bill and for its patience in reaching this stage. The time that we have taken between stages 1 and 2 has allowed the Government to lodge amendments that take into account, as far as possible, many of the concerns that were raised by the committee and the wider Parliament during stage 1, in particular on avoiding a costly national scheme and providing local flexibility.

As I committed to do back in February, I have worked in collaboration with Monica Lennon to ensure that the changes do not deviate the bill from the general principle that anyone, wherever they are in Scotland, should be able to access free period products in a dignified way in whatever circumstances they need to do so. I am pleased that we have been able to reach agreement that the Scottish Government's approach meets our joint aims of continuing to build on Scotland's world-leading position on period dignity. In practice, that has meant that the Scottish Government has had to develop significant amendments to the bill as a whole, particularly in part 1, which this group of amendments covers.

Amendment 17 is a significant amendment. It will replace section 1 with a duty on local authorities to make period products available free in Scotland for anyone who needs to use them, thereby protecting universal access to period products in law. Placing a duty on local authorities in that way means that we can avoid the need for subsequent regulations to set out how a right to products should be delivered.

The duty requires local authorities to put in place arrangements to ensure that anyone who needs to obtain period products can do so. The approach takes account of the view of the Convention of Scottish Local Authorities at stage

1, that delivery of universal, open and free access to period products should focus on localism, thereby allowing the way that duties will be fulfilled to take account of local circumstances and the views and needs of local people.

In recognition of the fact that some people might struggle to access products themselves, amendment 17 retains the flexibility for products to be obtained by someone on behalf of another person.

Amendment 17 also provides in law that, if arrangements include postage of products, local authorities are able to charge for packing and delivery of products. However, if that is the only way in which a person can access free products through local authority arrangements, packing and delivery must also be free. In both instances, the products themselves must be free of charge.

Amendment 17 has been drafted to ensure that the duty will apply only to individuals within Scotland. However, the duty is flexible enough to allow for persons who are resident in Scotland who leave the country for a short time to take sufficient products to meet their needs while they are outside Scotland.

Amendments 7, 18 and 19 are consequential. They will remove sections 2, 3 and 4 from the bill. The provisions in those sections related to the original section 1, so they are no longer required. Amendment 7 was lodged by Monica Lennon in recognition of the fact that there was little support from either stakeholders or the committee for the preliminary procedure for a national voucher scheme. The Scottish Government welcomes and supports that amendment.

Taken as a group, amendments 7 and 17 to 19 will simplify the bill. In the bill as introduced, the duty that was required to give effect to the right that would have been conferred by the original section 1 would have required a bureaucratic national scheme and would, possibly, have involved a number of different types of body. In the bill as amended by the amendments in the group, responsibility will now lie with only one type of body: local authorities. The amendments will also reduce the cost of the bill through avoiding the need for complex national bureaucratic arrangements.

I move amendment 17.

Monica Lennon (Central Scotland) (Lab): Thank you, convener, for your opening remarks and your tribute to John McCluskie. I am very grateful to John for his hard work on the bill. Of course I, too, express my condolences to his family and friends.

I am pleased that the cabinet secretary and I have been able to work together to lodge

amendments to the bill as introduced, which will result in a piece of legislation that meets my original policy intentions. I am grateful to the members of the committee for their work in considering the bill.

As has already been mentioned, I have indicated my support for all the amendments that were lodged in the name of the cabinet secretary, and I am pleased to note that, following our discussions, she is prepared to support all the amendments that I have lodged.

As the new provisions in amendment 17 should protect universal access to free period products in law, I am content to support it. As the cabinet secretary outlined, amendment 17 will shift the approach from a direct duty on ministers to a duty on local authorities, which reflects the current arrangements. I am satisfied that the amendment will achieve the same outcome of guaranteeing free universal access to period products.

Amendment 7, in my name, will remove section 3 and was lodged to address concerns that members raised in relation to possible use of a voucher scheme and the preliminary procedure. Amendment 17 will make section 3 unnecessary, so my amendment 7 is still required even though the context has changed. I will therefore move the amendment when we reach that point.

I have nothing to add to what the cabinet secretary said on amendments 18 and 19.

09:45

Andy Wightman (Lothian) (Green): I congratulate Monica Lennon and Aileen Campbell on their obvious hard work over the past few months.

I have a question about amendment 17. The proposed new subsection (4) states:

“For the purposes of subsection (2), the needs of a person who lives in Scotland are to be regarded as all arising while in Scotland.”

Is that what gives effect to the cabinet secretary's policy intention that someone who leaves Scotland for a short time can take products with them? What is the meaning of subsection (4)?

Aileen Campbell: That is just to make it clear that the intention is to provide support for people who reside in Scotland while they are here. I guess that it also enables people to take products away if they need to when they will not be in Scotland, which was the last point that I made in my opening remarks. Therefore, yes, the subsection gives effect to that.

The Convener: As no other members want to contribute, I invite the cabinet secretary to wind up

the debate and to say whether she wishes to press or withdraw amendment 17.

Aileen Campbell: I again thank the committee for its recognition of the work that Monica Lennon and I, and the teams that support us, have done to get to this stage. I also record our thanks to COSLA for its support. We have sought to simplify the bill and to ensure that it delivers our shared intention to have universal provision of free period products. We propose a straightforward way of doing that, and I am pleased that the committee appears to agree with it.

The Convener: I apologise; it appears that Annie Wells wants to say something, too.

Aileen Campbell: I am sorry.

The Convener: It was not your fault; it was mine.

Annie Wells (Glasgow) (Con): I want to comment on amendment 17 and on sections 1 and 2. To provide products free of charge, it is vital that the bill be properly financed. I highlight COSLA's concerns that there is not enough clarity regarding financial planning. Without clear evidence that the bill can be properly funded, it will be difficult to implement and for local partners to deliver. That is especially true given the current circumstances around the pandemic. I just wanted to highlight COSLA's feedback.

The Convener: Would you like to add anything, cabinet secretary?

Aileen Campbell: We deal with finances in the financial memorandum, but there are some amendments that perhaps point to that and that might give Annie Wells a further chance to raise the issue. We recognise the point, and we have committed to continue our engagement with COSLA on the finances. The situation will, of course, develop over time and will change as policy develops. We have made a commitment to continue our dialogue with COSLA and to work with it to ensure that the bill comes with the right support to enable it to give practical benefit across the country. I reassure Annie Wells and COSLA that we will continue to work with it.

Amendment 17 agreed to.

Section 1, as amended, agreed to.

After section 1

The Convener: Amendment 36, in the name of Sarah Boyack, is grouped with amendments 34, 24, 24B and 24A.

Sarah Boyack (Lothian) (Lab): I am very glad that we are debating amendments at stage 2 of the bill. At stage 1, we could never have imagined the circumstances that we are currently living

through, but having had that debate, we all truly appreciate how vital the bill is for anyone in Scotland who menstruates. I thank Monica Lennon again for the work that she has put into the bill, the grass-roots activists who have enabled us to get us here to debate the amendments today, and the cabinet secretary for working with Monica Lennon so that we can have the discussion.

The bill is vital for underpinning policies that might already be in place on the ground to ensure that they are not eroded by, for example, any efficiency savings or financial challenges that come about in the future. For that reason, I was very keen to encapsulate in my amendment 36 what I consider to be the key principles that need to be at the heart of the bill—namely, choice, eradication of stigma, protecting privacy, and ensuring that products are free, with no need to prove economic circumstance, and directly accessible.

I developed amendment 36 alongside Engender, which I thank for its input into and support for the bill from the very beginning. I also thank the clerks who helped me to draft the amendment.

Many local authorities across Scotland have already implemented schemes that fit local need. That is fantastic and reflects not only the versatility of our councils but the different options for access that are available across Scotland. That is great, because how services are made available in Edinburgh is unlikely to work in Orkney, and vice versa. Through amendment 36, I have tried not to prescribe how councils roll out their schemes but to ensure that somebody in Edinburgh and somebody in Orkney can expect to have equitable access to products.

In their letters to the committee, COSLA and the cabinet secretary said that they felt that amendment 36 would somewhat limit councils' flexibilities. I do not think that it will limit the establishment of online ordering options, but I recognise that methods such as topping up free school meals payments could be affected. However, I do not think that there would be anything to prevent period products from being incorporated into the system, so I am keen to get the cabinet secretary's views on that.

I also note COSLA's fear that local authorities will be expected to provide expensive high-end products. I do not accept that, but there should be plenty of options—pads, tampons and reusable products where possible—and that should be combined with education about the choices. Although I accept the concern that amendment 36 could mean that there would be an expectation of expensive branded products, I do not think that, in reality, the concern would be an issue in practice.

I hope that my amendment 36 will be supported. I am using it to test and to ensure that we get the principles not just in the bill but delivered in practice, because this is all about what happens in communities across Scotland after we pass the bill.

I move amendment 36.

Monica Lennon: I will speak to amendments 34, 24A and all the other amendments in the group.

The Scottish Government's amendment 17, which was debated in the previous group, replaces the whole of part 1 with a single new section. Although I am largely content with that, my concern is that the new section omits a number of important safeguards. My amendment 34 reinstates safeguards to ensure that products can be obtained "easily" and in a way that respects "dignity", and that a "reasonable choice" of product types is provided.

I listened carefully to Sarah Boyack's intentions in relation to amendment 36. I, too, am grateful to Engender and all the other organisations and grass-roots campaigners who have helped to shape and influence the bill. Although I am largely supportive of Sarah Boyack's amendment 36, my amendment 34 provides a more comprehensive package that covers all providers in the bill rather than just local authorities. For that reason, I ask members to support my amendment 34.

If we agree to both amendments 34 and 36, the bill could get a little bit untidy—the cabinet secretary might say more about that—but I hope that we can clear that up.

Amendment 24 will create a new section that requires ministers to issue guidance to responsible bodies on how to fulfil their duty to provide period products and how to publicise the availability of those products.

I understand that amendment 24B, in the name of Alexander Stewart, whom we have not heard from yet, relates to guidance to local authorities on delivery models for period products. On balance, I do not believe that it is necessary for that issue to be covered by guidance, because it will be for local authorities to decide when postal or other types of delivery are included in their arrangements.

Amendment 24A is consequential to amendment 34, in my name, and will ensure that guidance that is issued by ministers also covers the new requirements about safeguards.

Aileen Campbell: Sarah Boyack's opening remark about the fact that, during the stage 1 debate, we did not fully recognise where we might be when deliberating at stage 2 was an understatement. Nonetheless, that has not

prevented Monica Lennon and me from working hard to try to ensure that we commit to what we pledged at stage 1, which was to lodge amendments at stage 2 to make the bill work.

I will first deal with Monica Lennon's amendment 34. The Scottish Government believes that it is important that, in fulfilling their functions under the bill, responsible bodies have a duty to put in place a high standard of delivery that will continue to build on existing world-leading policies that have dignity and choice at their core. I thank Monica Lennon for her commitment to retaining dignity, ease of access and choice in the bill. That is important. I agree that those are principles that someone who needs to access free period products should expect to be met, which is why I supported the amendment when it was lodged. Inclusion of those provisions will support a high standard of delivery in any setting.

Amendment 36, in the name of Sarah Boyack, seeks to add provisions that are similar to those in amendment 34, but only in relation to local authorities. I thank Sarah Boyack for the work that she has done on the amendments and the recognition of the need for local flexibility. I do not think that she intended this, but amendment 36 seems to suggest that education providers or other public bodies do not need to consider the issues of dignity and choice in their delivery.

The Scottish Government broadly supports the intent behind the majority of the content of amendment 36. With regard to proposed new subsection (2)(d), access to products may, in some circumstances, be linked to particular services—for example, homelessness services—but linking all access to products to a person's entitlement to another service or benefit would be non-compliant with the duties placed on local authorities by section 1. In our view, proposed new subsection (2)(d) is therefore unnecessary.

Proposed new subsection (2)(e) causes problems and raises concerns. It seeks to impose a restriction on how local authorities meet their duties under section 1 by mandating that those can only be met specifically through provision of physical products. The effect of that subsection would be to remove the flexibility that local authorities have requested and that the Scottish Government has sought to maintain. During the Covid pandemic, many local authorities have adopted innovative ways to ensure that people have had access to free products, including the provision of voucher codes for online redemption via suppliers. Following consultation, some local authorities may wish to put in place similar approaches, which would be stifled by proposed new subsection (2)(e). We are particularly concerned about that unintended consequence, which would erode flexibility.

On balance, amendment 34 appears to be the better option, so I urge Sarah Boyack not to press amendment 36. If that amendment is pressed, I ask the committee to reject it. To reassure Sarah Boyack, I point out that tackling stigma has been at the heart of policy development and the approach that we have taken over the past three years. If it would help, I can commit to working with Engender on guidance that we will develop to ensure that it takes on board some of the points that Engender may have raised with Sarah Boyack.

My amendment 24 will place a duty on the Scottish ministers to publish guidance for responsible bodies to support them to fulfil their functions under sections 1, 5, 6 and 7. I note that additional steps in support of that are laid out in the amendments to be debated in group 5.

In preparation of the first set of guidance, the Scottish ministers will have a duty to consult relevant bodies and will also be able to consult individuals to ensure that experience to date informs the content. We already have considerable best practice to draw on. That was commended by the committee and stakeholders at stage 1. The guidance will be of interest not just in Scotland but internationally, as others seek to follow in Scotland's path. However, despite the considerable progress that we have already made, the guidance will not be static. It will evolve over time to reflect changing good practice so that all responsible bodies and other interested parties can benefit from the experience and learning of others.

In addition, to address points that were raised during stage 1, we expect the guidance to be clear that it is particularly important that responsible bodies consider the needs of those who may face particular difficulties in accessing free products—for example, disabled people or those with caring responsibilities.

Monica Lennon's amendment 24A seeks to ensure that the guidance specifically makes reference to the particular requirements on choice, ease of access and dignity that will be added by amendment 34. We believe that that is important, so that responsible bodies fully understand what those particular requirements mean in terms of their delivery arrangements. The Scottish Government therefore supports amendment 24A.

10:00

Amendment 24B, in the name of Alexander Stewart, seeks to mandate that the guidance must also specifically include guidance in relation to section 1(3)(b). That provision was included in section 1, as local authorities would otherwise be legally obliged to bear the cost of the packaging

and delivery of products under section 1. It is a permissive rather than a directive provision that is only for where local authorities choose to include postal delivery as part of their arrangements. However, the guidance will cover all duties under sections 1, 5, 6 and 7, and we do not consider it necessary to mandate that it specifically covers that issue. The Scottish Government therefore does not support amendment 24B.

Alexander Stewart (Mid Scotland and Fife) (Con): I acknowledge the work that Monica Lennon has done on the bill, the engagement that has taken place across communities and society, which has been vital, and the message that has gone out about the whole process. That has given individuals and organisations a much better understanding of the whole process, of where we can support, and of how we can move forward with choice and dignity.

My amendment 24B seeks to mandate that the guidance must also specifically include guidance in relation to section 1(3)(b). The amendment would help to ensure that clarity is achieved for local authorities in order that the likely uptake and cost implications of the delivery models are better able to be understood. Those provisions are included in section 1.

Mechanisms to enable the delivery of products may have to be established and maintained. I note the concerns that were raised by COSLA, which indicated that flexibility should be applied. I also note the comments that were made by the Scottish Government and the cabinet secretary, who does not believe that it is necessary to mandate. I take on board the views that have been expressed by the cabinet secretary and Monica Lennon this morning.

There is an understanding of what Monica Lennon's amendment 24A would achieve. I acknowledge that, in reality, my amendment might not achieve the same. I think that there is room for that to be achieved. I therefore may not move my amendment, as I acknowledge the work that has already taken place between the member and the cabinet secretary.

On the other amendments in the group, Sarah Boyack's amendment 36 is possibly too progressive. I acknowledge Monica Lennon's work in relation to amendment 34, which may be more appropriate in the circumstances in which we find ourselves to ensure that there is capacity and opportunity.

Andy Wightman: On the way forward, as far I can see, the bill now incorporates a clear duty, which is important, and the principle of flexibility, which is also important. It is also focused on local authorities as the delivery vehicle, which is an important step forward. Given the need for

flexibility and the need for the bill to focus on local authorities, which are, principally, the duty holders, it would be inappropriate at this stage to agree to amendments 36 and 24B.

I recognise the intention behind Sarah Boyack's amendment 36 and I do not rule out the possibility of further amendments at stage 3 to incorporate some of what is at the heart of what is intended in amendment 36, but the amount of work that has been done on that to date is impressive. The fact that COSLA is, by and large, on board and has been engaged in those conversations is incredibly important. I am mindful of what COSLA said in its evidence in relation to the amendments, so I am not minded to support amendments 36 or 24B. However, I will support the rest of the amendments in the group.

Sarah Boyack: I very much welcome the comments that colleagues have made. One thing that we get to do at stage 2 is test proposed legislation to see how we think that it will work. Through us, other people get to test proposed legislation, as well.

I very much welcome the cabinet secretary's commitment to consult Engender on the guidance. The guidance will be critical to the successful implementation of the bill, just as such guidance is for other legislation.

Good work has been done. I spoke to COSLA after it considered my amendment, so I understand the concerns. Amendment 36 is not about limiting flexibility; it is more about ensuring that the issues that I have raised are addressed and are at the forefront of people's minds in implementing the legislation, regardless of which part of the country they are in.

Monica Lennon's comment was appropriate. I very much support the cabinet secretary's comment about wanting to promote best practice. It is definitely worth learning from our experiences during the pandemic and the different measures that were put in place when young people were not able to go to schools. It is worth capturing that in the guidance.

I certainly do not want to limit flexibility; I just want to test what will happen. I note that the cabinet secretary said in her written submission that she supported the intent behind what I was trying to do. I want to check that I will not miss out if I do not press amendment 36. However, I see that Monica Lennon's amendment 34 picks up some of the key points in it, so I am happy to support her amendment.

At this stage of the process, we are trying to ensure that the proposed legislation is as good as it can be. I will not press amendment 36. I hope that, perhaps in the next few weeks, before we get

to stage 3, if there is anything in my amendment that could be brought back, we will do that.

Does the cabinet secretary want to intervene?

Aileen Campbell: Am I able to do that, convener?

The Convener: Yes.

Aileen Campbell: I simply want to commit to working with Sarah Boyack, if that would be helpful to her. I give her the reassurance that, if she does not press the amendment but has concerns that there will be gaps—Monica Lennon will also want to ensure that there are no gaps—it is in all our interests to make sure that we get the legislation as good as it can be. We will also need to ensure that there are no unintended consequences if we progress with any element of amendment 36.

We all want to make sure that flexibility, local circumstances and local context are recognised to enable the best approach to be taken for particular areas. Orkney might not be the same as Edinburgh, for example—I think that Sarah Boyack picked out the two authorities in those areas.

We want to ensure that the guidance is as good as it can be. Lots of people and organisations must be involved in its production. Again, I underline the commitment to work with Engender, and I give my assurance to the member that we will happily work with her on the issue.

Sarah Boyack: I very much welcome that.

On Alexander Stewart's amendment 24B, there are similar issues in terms of what he is trying to achieve. He also wants to make sure that we get the legislation right. Therefore, I welcome the comments that have been made in support of the principles behind that amendment, even if we do not support it today.

Amendment 36, by agreement, withdrawn.

Section 2—The period products scheme: general

Amendment 18 moved—[Aileen Campbell]—and agreed to.

Section 3—Using the scheme: preliminary procedure

Amendment 7 moved—[Monica Lennon]—and agreed to.

Section 4—Use and operation of the scheme

Amendment 19 moved—[Aileen Campbell]—and agreed to.

Section 5—Education providers to supply period products for pupils and students

The Convener: Amendment 20, in the name of the cabinet secretary, is grouped with amendment 20A.

Aileen Campbell: Section 5 sets out additional provisions over and above the universal duty set out in section 1, to provide an additional safety net for pupils and students to access free period products while in their place of learning. That is an important element to the duties that the bill will introduce. Indeed, in 2018, the Scottish ministers introduced a policy to ensure that no one has to miss out on education due to not being able to access period products where and when they need them.

However, the Scottish Government believes that the requirement in the bill for education providers to make products available in toilets is overly prescriptive and that, as with amendments to part 1, education providers should have the ability to build on existing voluntary arrangements based on local need. Therefore, we have sought to introduce a broader duty on meeting the needs of people who menstruate that allows for flexibility of arrangements.

Amendment 20 therefore replaces section 5 and places a duty on education providers to make period products obtainable for pupils and students on their premises. It makes it absolutely clear that, where there is more than one campus, the arrangements must ensure that products should be obtainable at locations in each campus. It will ensure that if students are studying a course that falls outwith traditional term times, products must be obtainable by them while they are on campus. However, the amendment does not require education providers to make products available during holiday periods for a course, nor is there a requirement to put in place arrangements to make products available for students studying outwith Scotland, which is in line with current voluntary policy. Outwith term times, pupils and students in Scotland will be able to obtain products via local authority universal provision.

Amendment 20A, which has been lodged by Monica Lennon, seeks to go further and mandate that every building that is normally used by students must have free period products obtainable. I understand the sentiment behind that amendment and recognise that it is a change from the original requirement. Although it will limit some of the flexibility of delivery that the Scottish Government has sought to introduce through its amendments, in practice, in the majority of cases, we would expect that products should be obtainable wherever students might need them, so, on balance, I am supportive.

However, I note the concerns that have been raised by COSLA and the Scottish Funding Council that there might be a small number of

buildings where it is not appropriate for products to be obtainable, and that the requirement might be particularly burdensome for institutions such as Scotland's Rural College or the University of the Highlands and Islands, which have many, often quite remote, locations that are spread out over a large area. Therefore, I am willing to support the amendment, but I caveat that by saying that I will seek an amendment at stage 3 to change the absolute nature of the requirement. I will, of course, work with Monica Lennon on the issue and seek consensus on it, as we have done with other issues.

Finally, I note that the Scottish Government has already taken action to protect in law access to period products in schools, through the Period Products in Schools (Scotland) Regulations 2020, which came into force earlier this month. However, when the provisions under section 5 are commenced, those regulations will be revoked, bringing all relevant provisions in relation to free period products in education settings into a single piece of legislation.

I move amendment 20.

Monica Lennon: As we have heard, section 5 places a duty on education providers to make period products available free of charge in education institutions for pupils or students who need them. I was pleased to note in the cabinet secretary's recent letter to the committee that the Government will support my amendment 20A, although I note her additional comments today in light of recent submissions from COSLA and the Scottish Funding Council, to which I listened carefully.

Amendment 20 does not go far enough to ensure that pupils and students can obtain products whenever they need them. It sets a statutory minimum of only one location on each campus. Amendment 20A would replace that with a stronger minimum requirement of one location in each building on the campus. Like the cabinet secretary, my intention is not to stifle flexibility, and no one wants products lying in buildings where they would never be used, but the principle is that buildings that would normally be used and accessed by students should have free provision. Therefore, I will press amendment 20A, but I will continue discussions with the cabinet secretary and stakeholders on the matter ahead of stage 3.

I move amendment 20A.

Andy Wightman: On amendment 20A, I note that COSLA says that there might be scenarios in which specific buildings are unsuitable for the purpose or where it would be inefficient to have the products available in certain buildings, although it also says that the guidance could say that that approach should be considered as a

default. However, we are being invited to consider a statutory provision that the products must be available from

“at least one location in each ... building.”

If we agree to the amendment, there is no scope for the flexibility that COSLA is looking for. The cabinet secretary has said that she will work with Monica Lennon to refine the provision between now and stage 3, so I do not think that there is an imperative for us to agree to amendment 20A now.

10:15

Subsection (3) of the new section that the cabinet secretary’s amendment 20 seeks to insert in the bill says:

“Where an institution operates over a number of campuses in Scotland, the locations specified in the arrangements established and maintained under subsection (1) must include locations within each such campus.”

It specifies the plural—“locations”—so there must be more than one such location on a campus. Those locations could be in the same building, but I think that the sense of the provision is that they would be in different locations on the campus—at the east end of it, the west end of it and so on.

The relevant provision in amendment 20 could be amplified a bit, but I do not see the necessity for amendment 20A at stage 2. I agree with the sentiment behind it, but I do not see why we need to vote to include what it proposes now, given that the cabinet secretary has admitted that she will seek to amend it at stage 3. Therefore, I am inclined to vote against amendment 20A at this stage.

Sarah Boyack: I get the points that Andy Wightman makes, but I also get why amendments 20 and 20A have been lodged. Some of our higher education institutions have very large campuses. It is not a question of their being in different parts of the country—they sometimes cover large areas in the same part of the country. The campus of the university that I used to teach in covers a very large area, and we would want several buildings to be covered.

Perhaps the issue could be picked up through consultation. I would have thought that student associations are important stakeholders. We would want them to be consulted by higher education institutions to ensure that we get this right. I was not thinking of it as a rural issue; I was thinking of large urban campuses. Depending on where students’ classes are held, accessibility is not necessarily possible across the whole campus.

I agree with the sentiment behind amendment 20A. I would like us to get a solution that would address the fact that, on a large campus, provision

in just two locations might not be appropriate. We need to think about how we can get this right on the ground. I am glad that the issue has been raised, and I would like the proposal to be tested further.

Aileen Campbell: It is clear that there is a consensus on the need to get the provision right so that the appropriate locations are covered, while being cognisant of the points that COSLA and others have raised. That is why we have pledged to refine the proposals at stage 3. As Sarah Boyack mentioned, we must ensure not only that the minimum provision is there but that we meet people’s needs, and consultation will be critical. We have pledged to work with members on further refinement before stage 3 to ensure that we do not end up with a minimum and that we meet the needs of students on campuses, whatever those might look like and whatever the configuration might be. We also need to be cognisant of the points that have been raised by building in a bit of flex to the approach that is taken in amendment 20A. However, in general, we are supportive of Monica Lennon’s intent.

Monica Lennon: The discussion has been helpful. I can offer some clarity. Amendment 20A would not lay down an absolute requirement. It would apply only to buildings that are normally used by students. For example, on a typical day, a student would move from their hall of residence to the department where they study and to the library. Those are the areas where students are normally found. Sarah Boyack’s remarks were helpful.

There might have been a slight misunderstanding on Andy Wightman’s part, which is unusual. Amendment 20A does not seek to impose a requirement to provide products in each building; they would have to be provided only in each building that is normally used by students. I accept that there is a need for further discussion and consultation with the key stakeholders that have been referenced today, and I am happy to engage in that work.

There has been a lot of discussion on the issue, and there is a lot of good practice that we can draw on. We have seen an example of that in recent weeks during the pandemic, when students who have had to self-isolate have had period products brought to them.

No one wants period products sitting in cupboards or empty buildings where they will never be needed, but equally we do not want students to go about their learning throughout the campus and find that they cannot access products when they need them. My aspiration is to ensure that students, in places where we would normally find them, will have easy access to free period products.

The Convener: On that basis, I take it that you wish to press amendment 20A.

Monica Lennon: I will press the amendment, convener.

The Convener: The question is, that amendment 20A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Brown, Keith (Mid Scotland and Fife) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wells, Annie (Glasgow) (Con)

Against

Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 20A agreed to.

The Convener: Gail Ross is absent at the moment, so unfortunately she could not take part in that vote.

I ask the cabinet secretary whether she wishes to press amendment 20, as amended.

Aileen Campbell: I will press the amendment.

Amendment 20, as amended, agreed to.

Section 5, as amended, agreed to.

Section 6—Specified public service bodies to supply period products for persons in their premises

The Convener: Amendment 21, in the name of the cabinet secretary, is grouped with amendments 15, 22 and 23.

Aileen Campbell: Section 6 makes provision for public service bodies to be specified to make period products obtainable for free in their premises through future regulations. Scottish ministers have no plans at this point to specify any bodies via section 6, but we believe that it is an important power to allow for future expansion of the scope of the act if that is deemed necessary. Amendments 15 and 21 to 23 will make changes to that section.

Amendment 21 provides that any future specified public bodies have to make free products obtainable to meet the needs of a person only while they are on the premises of that body. There will be no obligation on such bodies to make available bulk volumes of products for wider use, which is provided for in section 1. In addition, in line with section 5, if a body operates over

different sites, products must be obtainable for free at locations at each site.

Amendment 21 will also leave out the current section 6(2), which would give the Scottish ministers the power to specify how, where and when bodies should make products available. Instead, under the new provisions to be introduced by amendments that we will come to in a later group, bodies that are specified under section 6 will follow the same process as local authorities and education providers.

Amendment 15, in the name of Monica Lennon, will adjust the wording of section 6(5) to ensure that all bodies that are specified are individually consulted in advance of specification. The Scottish Government supports that technical amendment.

Amendment 22 will bring provisions in relation to the regulations that are required to specify a public service body under section 6 within that section. It states that the regulations to specify a body under section 6 should be

“subject to the affirmative procedure”,

and it aims to ensure sufficient scrutiny of the specification of any new public service body under that section.

Amendment 23 is a technical amendment, the purpose of which is to move the definition of “public service body” from section 10 to section 6.

I move amendment 21.

Monica Lennon: On amendments 21 to 23, I have nothing to add to what the cabinet secretary said.

Further to her comments on my amendment 15, I reiterate that it is a technical amendment for clarification. Section 6(5) is there to ensure that, if ministers wish to specify a class of public service body in regulations, they must first consult every body that is a member of the class. The current drafting of section 6(5) wrongly suggests that those bodies are first specified and then consulted. The amendment would adjust the wording of the subsection to make clear the order in which things are to happen.

Aileen Campbell: The amendments in group 4 relate to minor but important sections of the bill. They will allow ministers to expand the list of bodies that have duties to make free period products obtainable, and they will provide the necessary scrutiny if that is to happen. I would be grateful for the committee’s support and I will press the amendment.

Amendment 21 agreed to.

Amendment 15 moved—[Monica Lennon]—and agreed to.

Amendments 22 and 23 moved—[Aileen Campbell]—and agreed to.

Section 6, as amended, agreed to.

Before section 7

Amendment 34 moved—[Monica Lennon]—and agreed to.

Amendment 24 moved—[Aileen Campbell].

Amendment 24B not moved.

Amendment 24A moved—[Monica Lennon]—and agreed to.

Amendment 24, as amended, agreed to.

The Convener: Amendment 25, in the name of the cabinet secretary, is grouped with amendments 25A, 26, 27 and 35.

Aileen Campbell: The Scottish Government wants to see as high a standard as possible of delivery of the duties under the bill. The guidance that will be introduced through amendment 24 will set the high-level framework for local delivery, but it will be for responsible bodies to develop their own local arrangements to fulfil their duties.

The next step in the quality assurance process is set out in amendment 25, which will place a duty on responsible bodies to produce and publish a statement summarising how they will exercise their functions under sections 1, 5 and 6, and including how they have had regard to the guidance.

Amendment 25A, in the name of Monica Lennon, will add a requirement for responsible bodies to ensure that that statement makes specific reference to how the arrangements that they have put in place take account of the particular requirements on choice, ease of access and dignity that were added by amendment 34. I fully agree that it is important for the purposes of local accountability that statements should specifically set that out. The Scottish Government therefore supports amendment 25A.

The final step in the process is possibly the most important, as it will ensure that local needs and views are taken into account when responsible bodies are putting in place their arrangements. Amendment 26 will do that through placing a duty on responsible bodies to consult with persons who will need to access free products through their duties under sections 1, 5 and 6. Without first carrying out that consultation, responsible bodies will not be able to produce a statement on how they will exercise their functions. The guidance under amendment 24 is likely to include guidance on that consultation process. However, amendment 26 sets out a number of specific issues that must be covered in

the consultation, including where, how and which free products should be made obtainable.

It is also important for people who need to access free products that information is widely available on where, how and when they are obtainable for free. Amendment 27 will replace section 7, which would have placed that duty on Scottish ministers. That duty now falls on all responsible bodies with duties under sections 1, 5 or 6.

Taken as a whole, amendments 25 to 27 along with amendments already debated in an earlier group set out practical details to ensure that existing high standards of delivery are maintained and built on.

10:30

I understand the reasoning behind amendment 35, in the name of Annie Wells, but it raises a number of concerns. It seeks to impose duties on all responsible bodies to report on the exercise of their functions under the act. It mandates reporting annually. However, in practice, that would mean that local authorities would have to report twice: once at the end of the financial year in relation to section 1 duties and then again at the end of the academic year in relation to section 5 duties. Responsible bodies must consult individuals in the local authority area, students, pupils and product users, as appropriate, in preparing their reports. Having to undertake such an exercise and produce a report every year would be a significant burden on responsible bodies, particularly local authorities, specifically when considered alongside the duties that the bill places on them around consultation and the publication of a statement of the exercise of their functions.

I also note that subsection (1)(c) of the section that amendment 35 would introduce would not sit well in the bill, which seeks to put in place universal access to free period products for anyone who needs them and is therefore framed around equality and not around tackling poverty. The consensus at stage 1, as set out in the committee's report, was that we should view the policy and the bill through a lens of period dignity, rather than period poverty. Putting in place a duty to make free period products widely obtainable is not in itself likely to be a key driver in reducing poverty, so seeking to mandate reporting on how the act is contributing to tackling the root causes of poverty relating to period products is not appropriate, even if well intentioned.

I urge Ms Wells not to move amendment 35. However, as we understand the broad intent behind the amendment, we are happy to consider whether a Scottish Government amendment at stage 3 would be appropriate.

I move amendment 25.

Monica Lennon: I have nothing to add on amendments 25, 26 and 27. Amendment 25A is consequential to amendment 34 and would require the statements to include responsible bodies' plans for ensuring that products can be obtained easily and in a way that respects dignity and that they provide a reasonable choice of product types. I am grateful to the cabinet secretary for her comments on amendment 25A.

On amendment 35, in the name of Annie Wells, on the requirements regarding the publication of reports by responsible bodies, I agree with the cabinet secretary that such a requirement could represent a significant and disproportionate burden on responsible bodies. However, I would be happy to discuss with Annie Wells any amendments in that area that might be proposed well in advance of stage 3.

I move amendment 25A.

Annie Wells: I thank the cabinet secretary and Monica Lennon for understanding the intent of amendment 35. I have listened to feedback from stakeholders such as COSLA. I will not take the amendment any further at this stage, but I would welcome the opportunity to discuss the issue with the cabinet secretary and Monica Lennon further, ahead of stage 3.

Aileen Campbell: As I said in my opening remarks, the Government understands—as, it is clear, does Monica Lennon—the intent behind amendment 35 and what Annie Wells seeks to achieve. I am grateful that Annie Wells does not intend to move the amendment. We will continue the dialogue and endeavour to take on board any concerns that are outstanding that she may have.

Monica Lennon: I echo what the cabinet secretary said. I thank Annie Wells for her interest in the bill, and I would be happy to have further discussions.

Amendment 25A agreed to.

Amendment 25, as amended, agreed to.

Amendment 26 moved—[Aileen Campbell]—and agreed to.

Section 7—Scottish Ministers, councils and others to publicise the availability of period products

Amendment 27 moved—[Aileen Campbell]—and agreed to

Section 7, as amended, agreed to.

After section 7

Amendment 35 not moved.

Section 8—Payments by Scottish Ministers

The Convener: Amendment 28, in the name of the cabinet secretary, is grouped with amendments 29 to 31.

Aileen Campbell: This group contains a number of amendments, all in my name, relating to general provisions in the bill.

Section 8 makes provision for the Scottish ministers to make payments in relation to any act of the Scottish Parliament arising from the bill. During stage 1, the committee raised concerns about that provision, such as its permissive rather than mandatory nature. In addition, existing mechanisms already allow for the Scottish ministers to make payments to public bodies that are specified under the bill—or likely to be specified in future—namely local authorities, education providers and other public service bodies. We have a concern that the provision would set a precedent for placing local authority funding requirements in legislation, when the funding required does not require additional statutory basis. The Scottish Government's position is that the provision is unnecessary, and amendment 28 will remove it.

Amendment 29 is a technical amendment to remove section 9. Regulations are no longer required under section 2, because the section has been removed by amendment 18. The relevant provisions in relation to section 6 will be included within that section via amendment 22, which has already been debated in an earlier group.

Amendments 30 and 31 cover the definitions of terms used throughout the bill. Amendment 30 will add a new section that sets out key definitions that apply throughout the bill. Those definitions are of sufficient importance that they merit their own section, so that people can easily find them.

The definition of “period products” that is used in the bill will encompass all types of products that are commonly used by people who menstruate, including reusable period products. Responsible bodies are already making reusable products free in a large number of cases through the voluntary provision, but setting that out specifically in the definition reflects the importance of them considering reusable products in fulfilling their functions.

As already mentioned in the debate on group 2, the definition of

“references to a person's needs”

makes it explicit that anyone who menstruates can have needs arising under the bill, and there is no further test of need to be applied, which protects universality.

Because of the number of changes that the Scottish Government has proposed to the definitions, it is clearer to submit amendment 31 to replace section 10 in its entirety, rather than a large number of individual amendments. Amendment 31 will restructure section 10 to reflect other amendments. Some of the changes are technical, including the removal of a number of definitions because they relate to sections removed by other amendments. Definitions of “further education institution” and “higher education institution” are added to replace “college” and “university” in the amended section 5. The definitions that are used are consistent with other legislation.

One effect of amendment 31 is that private further education institutions are no longer within the scope of the bill. Those private institutions take varied forms, so it is difficult to assess or identify which bodies fall within the original definition. The inclusion of those institutions within the scope of the bill would lead to lack of clarity as to which had to comply with the duties that are set out in section 5, because Scottish Government officials do not hold a comprehensive list of such institutions, so the Scottish ministers would not know which institutions to issue guidance to. Of course, students at such institutions will be able to access free products via section 1 of the bill.

I move amendment 28.

The Convener: Does Monica Lennon want to add anything?

Monica Lennon: I have nothing to add to what the cabinet secretary has said.

The Convener: Does Andy Wightman want to come in?

Andy Wightman: Maybe.

The Convener: If it is “Maybe”, we will call it yes and you can have your say now.

Andy Wightman: Yes. I intended to speak on amendment 28, in the name of Aileen Campbell, to leave out section 8. She has given some of the rationale for leaving out section 8, but I just want some clarification. She is right that there is no need to place in the bill separate statutory provisions for local government funding. However, the bill adds to local authorities’ statutory duties, and the cabinet secretary will be aware of on-going debates, particularly in this committee, about local government funding pressures.

Putting aside debates about what ring fencing means, local authorities have a range of what they regard as protected funding and protected functions—in other words, things that they must do by law. For example, local authorities must provide an education service; they have no choice about

that. The bill will add to the matters that local authorities have no choice but to deliver.

The funding of local government is not set out in any statutory framework; at the moment, it is subject to annual negotiations and a funding formula. I would like the cabinet secretary to say a little more about what thought has been given to how the new statutory duty on local government will be funded. How will the Government assess the quantum of funding? Will the funding formula be adjusted as a consequence?

Aileen Campbell: We got into this territory with Annie Wells’s comments on the first group of amendments. We have already committed to baseline funding for local authorities and for the local government settlement in order to protect future delivery, and that commitment stands. We will continue to engage with COSLA on the policy. Funding will be subject to the evolution of the policy. It is about ensuring that we understand how the policy develops, whether further input is needed and whether we need to rejig things. That will be further reflected in those discussions.

The estimates in the current approach have been based on current data. There were a lot of discussions about finances in the initial stages of the bill. We published the financial memorandum, which is based on the current evidence and data that we have. It is important to recognise that we have committed to baseline funding for local government in recognition that the delivery of such products will be new for local authorities.

Andy Wightman: Is thought being given to whether, for example, such funding will form part of the general revenue grant, or whether it will be a ring-fenced pot? I have views on that, but I want to know whether it is intended that the funding will form part of the general revenue grant.

Aileen Campbell: It will be part of the local government settlement, so it will be. That is for the future, but we have already committed to baseline funding at the moment. We have committed to that again through the bill process. We published the financial memorandum, which is based on the current estimates of take-up, but it is important to recognise that the policy will evolve and adapt over time. We will need to reflect that through the discussions that we will have with COSLA. We have committed to ensure that we adequately and appropriately support local authorities in the delivery of the policy. That is why we have already committed to baseline funding, and we will further commit to that as the bill progresses.

The Convener: Do you have any further comments in winding up?

Aileen Campbell: We recognise that the financing of the policy is important to ensure that it delivers universality and enables the flexibility that

we know is so important. We have already invested and provided a lot for local authorities, and we have worked with them in a practical sense. The bill will not disrupt the approach that we seek to take.

I take on board the relevant and legitimate points that Andy Wightman has made; others will no doubt want to make similar points at stage 3. I give the commitment that we will continue to work with COSLA and that we have baselined funding. That commitment will continue.

The Convener: Gail Ross has joined us again, from wherever she is.

Amendment 28 agreed to.

Section 9—Regulations

Amendment 29 moved—[Aileen Campbell]—and agreed to.

After section 9

Amendment 30 moved—[Aileen Campbell]—and agreed to.

10:45

Section 10—Definitions etc

Amendment 31 moved—[Aileen Campbell]—and agreed to.

Section 10, as amended, agreed to.

Section 11—Commencement

The Convener: Amendment 32, in the name of the cabinet secretary, is grouped with amendment 33.

Aileen Campbell: There was discussion at stage 1 about it being unrealistic to require the scheme that is proposed in the bill to come into force within a year of the bill gaining royal assent. Although the scheme has been removed through Scottish Government amendment, we believe that a reasonable amount of time is required before the key duties in sections 1, 5 and 6 come into force.

That time will allow the Scottish ministers to issue guidance to responsible bodies to consult and publish their statements on exercise of functions, and to provide information to the public in advance of the substantive duties that are set out under sections 1 and 5, in the first instance, coming into force.

Amendment 33 therefore changes commencement of the provisions in the bill, giving the Scottish ministers the power to commence duties on local authorities and education providers by regulations within two years of the bill gaining royal assent. Consequently, only technical

provisions need to come into force the day after royal assent, which is covered by amendment 32.

If I may, I would like to make a point about the bill's structure. It is a short bill, and our view is that the original three-part structure does not lend itself to the bill as amended. Amendments that simply leave out part headings are not permitted, but my officials have discussed that with the relevant parliamentary officials, who, I understand, are able to do that by printing points. I mention that simply in the interests of maximum transparency.

I move amendment 32.

The Convener: There are no comments from committee members. Would the cabinet secretary like to wind up?

Aileen Campbell: Even while we wait for royal assent for the bill to kick in, the provisions are already there and we will continue to support the policy intent. I hope that that gives reassurance that there will not be any gap before things become legal. I press amendment 32.

Amendment 32 agreed to.

Amendment 33 moved—[Aileen Campbell]—and agreed to.

Section 11, as amended, agreed to.

Section 12 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

The bill will now be reprinted as amended at stage 2. The Parliament has not yet determined when stage 3 will be held. Members will be informed of that in due course, along with the deadline for lodging stage 3 amendments. In the meantime, stage 3 amendments can be lodged with the clerks in the legislation team. Congratulations, Monica.

That concludes the public part of the meeting.

10:48

Meeting continued in private until 11:46.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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